

Department of  
Veterans Affairs

# Memorandum

Date: October 27, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Failure to Follow VA Performance Policy  
Office of Diversity and Inclusion, VA Central Office, Washington, DC  
(2011-00651-IQ-0024)

To: Deputy Assistant Secretary for Resolution Management (08)

1. The VA Office of Inspector General Administrative Investigations Division, while investigating another allegation, found that [REDACTED] Office of Diversity and Inclusion (ODI), as well as other ODI supervisors, failed to provide [REDACTED] ODI, a performance plan within 60 days after the beginning of the appraisal period from 2006 to 2010 and the required interim progress reviews in 2006, 2007, 2009, and 2010, as required by VA policy. We also found that the Office of Human Resources gave [REDACTED] ODI, ambiguous advice in reference to her use of overlapping percentage ranges to calculate performance-based cash awards. (b) (7)(C)

2. We suggest that you ensure that [REDACTED] as well as other ODI supervisors, receive refresher training on VA performance policy and that they adhere to that policy. We also suggest that you seek advice from the Office of General Counsel (OGC) and the Office of Human Resources (OHR) to clarify whether the use of overlapping percentage ranges to calculate performance-based awards is permissible. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. No response is necessary. We addressed an unsubstantiated allegation in a separate memorandum, and it will not be discussed in this memorandum. (b) (7)(C)

### *Performance Plans and Progress Reviews*

3. Federal regulations require agencies to establish performance appraisal systems which provide for communicating to each employee at the beginning of an appraisal period the performance plan and critical elements of the employee's position and for evaluating each employee during the appraisal period on these standards and elements. It also requires performance plans be provided to employees at the beginning of each appraisal period and that employees receive one or more progress reviews during each appraisal period. 5 CFR §§ 430.204, 430.206(b) and 430.207(b). VA policy states that a performance plan must be developed to measure performance requirements of each employee's position and requires raters to ensure that each

employee receives a performance plan for each rating cycle and obtain the employee's signature verifying receipt of the performance plan within 60 days after the beginning of the appraisal period, the employee's appointment to a new position, or a change in the employee's performance plan. It also states that raters must use VA Form 0750 for documenting the approved performance plan; each plan must include all elements that will be used in assigning a summary level; each must contain at least one critical element and one non-critical element that address individual performance; an employee must receive and have documented at least one progress review during the appraisal period; and the progress review must be documented on VA Form 0750 or its electronic equivalent. VA Handbook 5013/1, Part 1, Paragraphs 6 and 7.

4. ██████████'s performance appraisal forms (VA Form 0750) reflected that from 2006 to 2010, ██████████ did not receive his performance plan within 60 days after the beginning of the appraisal period and the forms did not document the required progress reviews for rating periods October 1, 2005, to September 30, 2006; October 1, 2006, to September 30, 2007; March 13, 2009, to September 30, 2009; and October 1, 2009, to September 30, 2010. ██████████ told us that in the past 3 to 4 years, he believed that his awards were lower than they would have been, had his performance standards been properly identified as critical and non-critical and not arbitrarily made critical. He further said that in 2006, his supervisor changed his elements in the middle of the rating period but failed to tell him of the change. ██████████ told us that he always received his performance plans late. He further said that in 2010, he and ██████████ disagreed throughout the year about his critical elements and that he did not sign his performance plan until the end of the year. (b) (7)(C)

5. ██████████ told us that she did not know why ██████████ did not receive his performance plans within 60 days after the beginning of each appraisal period. She said that she also did not know why the VA Forms 0750 associated with ██████████'s annual performance plan did not document his mid-term progress reviews. She said that she met with him weekly to give him feedback on his work and provided regular guidance through email or face-to-face, and she said that ██████████ did not have any problems meeting his performance elements. (b) (7)(C)

6. We concluded that ██████████ as well as other ODI supervisors, failed to provide ██████████ a performance plan within 60 days after the beginning of the appraisal period from 2006 to 2010 and the required interim progress reviews in 2006, 2007, 2009, and 2010, as required by VA policy. We suggest that you ensure that ██████████ as well as other ODI supervisors, receive refresher training on VA policy and that they adhere to that policy. (b) (7)(C)

#### *Performance-Based Awards*

7. Federal laws and regulations require that performance-based cash awards be based on employees' ratings of record and that systems for calculating performance-based cash awards, as designed and applied, must make meaningful distinctions based on levels of performance. 5 USC § 4505a and 5 CFR § 451.104. According to the Office

of Personnel Management (OPM), "meaningful distinctions based on levels of performance" means that, "employees with higher ratings of record receive larger . . . cash awards than those with lower ratings of record." OPM Performance Management Appraisal Systems and Programs FAQs. (<http://www.opm.gov/perform/faq/pbcawards.asp>) VA incorporated this into policy, as reflected in VA Handbook 5017/9, paragraph 2 (July 7, 2010). OPM guidance also states that agencies "can design their awards programs so employees with higher ratings of record receive larger cash awards, as a percentage of base pay, than those with lower ratings," indicating that "larger cash awards" in this context can mean a larger percentage of base pay. However, OPM gives wide latitude to Federal agencies in interpreting this requirement, stating that agencies have flexibility to design their awards programs to meet the needs of their agencies, provided that these programs reflect meaningful distinctions based on levels of performance, so that employees with higher ratings of record receive larger cash awards. 5 CFR Part 451.

8. [REDACTED] told us that she used a system for calculating performance-based cash awards by using overlapping percentage ranges, and award records reflected that this, at times, resulted in some employees with different ratings of record receiving the same award when calculated as a percentage of their base pay. Email records reflected that in September 2010, [REDACTED] sought guidance from [REDACTED] who assured her that the use of overlapping percentage ranges to calculate performance-based awards was permissible. [REDACTED] however, told us that beginning in fiscal year 2011, she would use fixed percentages to avoid any concerns. Given the latitude granted to Federal agencies, the ambiguity in the applicable laws, regulations, policy, and guidance, and the advice HR gave [REDACTED] we found that [REDACTED] acted in good faith when she used overlapping percentage ranges to calculate performance-based awards. However, we found that the use of overlapping percentage ranges, although not explicitly prohibited, was questionable under OPM guidance and VA policy, as it sometimes resulted in an employee with a lower rating of record receiving the same award as someone with a higher rating. We suggest that you seek advice from OGC and OHR to clarify whether the use of overlapping percentage ranges to calculate performance-based awards is permissible.

(b) (7)(C)

10. We are providing this memorandum for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with the identified parties and provide them a redacted copy of this memorandum, within the bounds of the Privacy Act; however, the unredacted version may not be released to them. No response is necessary. If you have any questions, please contact [REDACTED]